was willing to do all things necessary to the purported conduct of the arbitration, may make an order staying the proceedings. A "submission" is defined by the Ordinance as a written agreement to submit present or future differences to arbitration whether an arbitrator is named therein or not. Section 11 gives power to the court in all cases of reference to arbitration to remit the matters referred to for the re-consideration of the arbitrator or umpire. And where an award is remitted the arbitrator or umpire shall, unless the order otherwise directs, make their award within 3 months after the date of the order. Section 10 gives power to the court to enlarge the time for making an award whether the time for making an award has expired or not.

In my view, the reference in this case was a reference to arbitration made by the agreement of the parties themselves. Therefore, clause 3 of the first Schedule should apply and in the circumstances, the learned arbitrator had the power to extend the time for making his award as he had done. This reference is not, with respect, as the learned judge had stated, a dispute remitted by the court for the decision of the arbitrator, and of course if it had been such a case, then I would with respect agree that only the court may extend the time for making the award and under section 10, he could do so whether the original time given for making the award has expired or not. In England there is no time fixed for making an award out of court, as can be seen from the passage cited by the learned judge from *Halsbury* paragraph 95, page 42 of Vol. 2, 3rd Edition, which reads as follows:—

"Except where an award is remitted by the court when the new award must be made within three months of the order, and subject to anything to the contrary in the arbitration agreement, an arbitrator or umpire has power to make an award at any time."

In the circumstances I would therefore allow the appeal and direct that the award made by the arbitrator be enforced in the same manner as a judgment. I also award costs against Maidin here and in the court below.

Ong Hock Thye C.J. (Malaya): This appeal must be allowed with costs. The learned judge was manifestly in error, as was learned counsel for the respondent, for the word "remit" bears a special meaning in the Arbitration Ordinance, as it does in the English Arbitration Act. It means to "send back for reconsideration and re-determination": see 2 *Halsbury*, 3rd Edn., paragraph 121; *Russell on Arbitration*, 17th Edn., p. 305. In the instant case, the matter in dispute had never been "remitted", in that sense, by the court to the arbitrator.

The order of the court below is accordingly set aside and the application of the appellant granted as prayed for enforcement of the award.

MacIntyre F.J. concurred.

Appeal allowed.

Solicitors: *Shearn, Delamore & Co.; D.A. Devadason.*

PUBLIC PROSECUTOR v. LEE HOR SAI

[R.Cr.J. (Ong Hock Sim J.) March 28, 1969]
[Penang — Criminal Revision No. 4 of 1969]

Penal Code, s. 326 — Voluntarily causing grievous hurt by dangerous weapons or means — Permanent disfiguration of head or face — Trial before magistrate a nullity — Preliminary inquiry — No bail pending.

The accused was convicted by the learned magistrate on his own plea of guilty to a charge for voluntarily causing hurt to a girl by means of a knife and sentenced to a fine of $250. He had slashed he face of the girl on the left and right cheeks some 3 or 4 times.

Held: under the Penal Code, where there is permanent disfiguration of the head or face the offence should be one of grievous hurt and the charge framed under section 326. The trial of the accused before the learned magistrate therefore was a nullity because the charge under section 326 carries a term which may extend to life, or 10 years and shall also render him liable to whipping.

CRIMINAL REVISION.

K.C. Vohrah (Deputy Public Prosecutor) for the Public Prosecutor.

David Choong for the accused.

Ong Hock Sim J.: The accused in this case was convicted by the learned magistrate on his own plea of guilty to a charge for voluntarily causing hurt to one Teoh Gaik Nai (f) by means of a knife and sentenced to a fine of $250. He slashed the face of the girl, the said Teoh Gaik Nai, on the left and right cheeks some 3 or 4 times.

I have examined the girl and I am satisfied that the scars on her face are permanent. I am, however, sending her for medical examination. Under the Penal Code, where there is permanent disfiguration of the head or face the offence should be one of grievous hurt and the charge framed under section 326 of the Penal Code. The trial before the learned magistrate therefore is a sullity because the charge under section 326 carries a term which may extend to life, or ten years, and shall also render him liable to whipping.

I therefore set aside the order of the learned magistrate fining him $250. I order that he be re-arrested and charged under section 326 of the Penal Code. There should be a preliminary enquiry with a view to committal to the High Court for trial. There will be no question of bail being granted pending the preliminary enquiry.

Order accordingly.

Solicitors: *Lim, Lim & Oon.*